

Information Regarding CPUC and ORA Discovery Rights, Access to Confidential Information, Computer Models and Reimbursement of Consultant Costs

1. ORA's Discovery Rights at the CPUC: The California Public Utilities Commission (CPUC) and Office of Ratepayer Advocates (ORA) have broad discovery powers for use in CPUC proceedings.¹ ORA's discovery rights are rooted in the fact that ORA is a division within the CPUC.² In CEC proceedings, ORA does not have equivalent statutorily based discovery powers.

¹ Public Utilities Code section 313: "The commission may require, by order served on any public utility, the production within this State at such time and place as it designates, of any books, accounts, papers, or records kept by the public utility in any office or place without this State, or, at its option, verified copies in lieu thereof, so that an examination thereof may be made by the commission or under its direction."

Public Utilities Code section 314: "The commission, each commissioner, and each officer and person employed by the commission may, at any time, inspect the accounts, books, papers, and documents of any public utility. The commission, each commissioner, and any officer of the commission or any employee authorized to administer oaths may examine under oath any officer, agent, or employee of a public utility in relation to its business and affairs. Any person, other than a commissioner or an officer of the commission, demanding to make any inspection shall produce, under the hand and seal of the commission, authorization to make the inspection. A written record of the testimony or statement so given under oath shall be made and filed with the commission.

(b) Subdivision (a) also applies to inspections of the accounts, books, papers, and documents of any business which is a subsidiary or affiliate of, or a corporation which holds a controlling interest in, an electrical, gas, or telephone corporation with respect to any transaction between the electrical, gas, or telephone corporation and the subsidiary, affiliate, or holding corporation on any matter that might adversely affect the interests of the ratepayers of the electrical, gas, or telephone corporation."

² Public Utilities Code section 309.5: "(a) There is within the commission a division to represent the interests of public utility customers and subscribers within the jurisdiction of the commission. The goal of the division shall be to obtain the lowest possible rate for service consistent with reliable and safe service levels. For revenue allocation and rate design matters, the division shall primarily consider the interests of residential and small commercial customers. The amendments made to this section by Chapter 440 of the Statutes of 2001 are not intended to expand the representation and responsibilities of the division.

(b) The director of the division shall be appointed by and serve at the pleasure of the Governor, subject to confirmation by the Senate. The director shall annually appear before the appropriate policy committees of the Assembly and the Senate to report on the activities of the division.

(c) The commission shall, by rule or order, provide for the assignment of personnel to, and the functioning of, the division. The division may employ experts necessary to carry out its functions.

Personnel and resources shall be provided to the division at a level sufficient to ensure that customer and subscriber interests are fairly represented in all significant proceedings.

(d) The commission shall develop appropriate procedures to ensure that the existence of the division does not create a conflict of roles for any employee or his or her representative. The procedures shall include, but shall not be limited to, the development of a code of conduct and

2. Confidential Materials: Public Utilities Code section 583 governs the use of confidential information provided by utilities to the CPUC and ORA.³ Utilities are broadly defined to include utility subsidiaries, affiliates or corporations holding a controlling interest in a public utility. In practice and in response to discovery requests, utilities provide information to the CPUC and ORA, and then assert confidentiality under section 583 for selected portions of that information. While ORA has access to confidential information under section 583, other parties are routinely required by utilities to sign confidentiality agreements governing the use and return of confidential information. Additionally, the CPUC has a well established process for resolving discovery disputes. In CEC proceedings, ORA

procedures for ensuring that advocates and their representatives on a particular case or proceeding are not advising decisionmakers on the same case or proceeding.

(e) The division may compel the production or disclosure of any information it deems necessary to perform its duties from entities regulated by the commission provided that any objections to any request for information shall be decided in writing by the assigned commissioner or by the president of the commission if there is no assigned commissioner.

(f) There is hereby created the Public Utilities Commission Ratepayer Advocate Account in the General Fund. Moneys from the Public Utilities Commission Utilities Reimbursement Account in the General Fund shall be transferred in the annual Budget Act to the Public Utilities Commission Ratepayer Advocate Account. The funds in the Public Utilities Commission Ratepayer Advocate Account shall be utilized exclusively by the division in the performance of its duties. The commission shall annually submit a staffing report containing a comparison of the staffing levels for each five-year period.

(g) On or before January 10 of each year, the commission shall provide to the chairperson of the fiscal committee of each house of the Legislature and to the Joint Legislative Budget Committee all of the following information:

(1) The number of personnel years assigned to the Office of Ratepayer Advocates.

(2) The total dollars expended by the Office of Ratepayer Advocates in the prior year, the estimated total dollars expended in the current year, and the total dollars proposed for appropriation in the following budget year.

(3) Workload standards and measures for the Office of Ratepayer Advocates.

(h) The division shall agree to meet and confer in an informal setting with a regulated entity prior to issuing a report or pleading to the commission regarding alleged misconduct, or a violation of a law or a commission rule or order, raised by the division in a complaint. The meet and confer process shall be utilized as an informal means of attempting to reach resolution or consensus on issues raised by the division regarding any regulated entity in the complaint proceeding.”

[SB 608](#), Escutia, currently pending before the Legislature, would make significant modifications to section 309.5.

³ Public Utilities Code section 583: “No information furnished to the commission by a public utility, or any business which is a subsidiary or affiliate of a public utility, or a corporation which holds a controlling interest in a public utility, except those matters specifically required to be open to public inspection by this part, shall be open to public inspection or made public except on order of the commission, or by the commission or a commissioner in the course of a hearing or proceeding. Any present or former officer or employee of the commission who divulges any such information is guilty of a misdemeanor.”

has no statutory right to confidential information. Southern California Edison recently sued the CEC to keep its peak demand forecasts confidential.⁴

3. Access to Computer Models: Public Utilities Code sections 1821-1822 govern the ability of the CPUC and ORA to obtain computer models used by utilities in CPUC proceedings.⁵ The Commission also has Rules of Practice and Procedure

⁴ Sacramento Bee, "Utility Sues Energy Panel," June 11, 2005, <http://www.sacbee.com/content/news/energy/story/13045985p-13891742c.html>

⁵ Public Utilities Code section 1821: "As used in this article, the following definitions apply:

(a) "Computer model" means a computer program.

(b) "Operations model" means a computer model that replicates, lists, describes, or forecasts a public utility's internal functions, including, but not limited to, its accounting procedures, cash management procedures, personnel assignments and procedures, and inventory control.

(c) "Planning model" means a computer model that replicates, lists, describes, or forecasts a public utility's complex functions, including, but not limited to, the forecasting of future loads and resources, calculating costs of electricity generation, producing financial statements, and calculating costs of natural gas production or supply.

(d) "Public utility" includes every public utility and every business which is a commission regulated subsidiary or commission regulated affiliate of a public utility. "Public utility" does not include a common carrier or a telephone corporation whose service is determined to be competitive by the commission.

(e) "Verify" means to assess the extent to which the computer model mimics reality."

Public Utilities Code section 1822: "(a) Any computer model that is the basis for any testimony or exhibit in a hearing or proceeding before the commission shall be available to, and subject to verification by, the commission and parties to the hearing or proceedings to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence, except that verification is not required for any electricity demand model or forecast prepared by the State Energy Resources Conservation and Development Commission pursuant to Section 25309 or 25402.1 of the Public Resources Code and approved and adopted after a hearing during which testimony was offered subject to cross-examination. The commission shall afford each of these electricity demand models or forecasts the evidentiary weight it determines appropriate. Nothing in this subdivision requires the State Energy Resources Conservation and Development Commission to approve or adopt any electricity demand model or forecast.

(b) Any testimony presented in a hearing or proceeding before the commission that is based in whole, or in part, on a computer model shall include a listing of all the equations and assumptions built into the model.

(c) Any data base that is used for any testimony or exhibit in a hearing or proceeding before the commission shall be reasonably accessible to the commission staff and parties to the hearing or proceeding to the extent necessary for cross-examination or rebuttal, subject to applicable rules of evidence, as applied in commission proceedings.

(d) The commission shall adopt rules and procedures to meet the requirements specified in subdivisions (a), (b), and (c). These rules shall include procedural safeguards that protect data bases and models not owned by the public utility.

(e) The commission shall establish appropriate procedures for determining the appropriate level of compensation for a party's access.

(f) Each party shall have access to the computer programs and models of each other party to the extent provided by Section 1822.

that establish procedures implementing sections 1821-1822, including procedures to manage alleged confidential and proprietary information.⁶

4. Reimbursement for Transmission Study Contracts: Public Utilities Code section 631 requires utilities to reimburse the CPUC and ORA for consultants hired to evaluate utility electric and gas transmission applications.⁷ At CEC proceedings, ORA does not have the same ability to be reimbursed. If electric and gas transmission planning is moved to the Energy Department, ORA would need either new statutory authority to continue being reimbursed for consultant costs or an augmented budget. Otherwise, ORA's representation of ratepayer interests would suffer purely from the change of venue for electric and gas transmission planning.

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The commission shall not require a utility to provide a remote terminal or other direct physical link to the computer systems of a utility to a third party.

(g) The commission shall verify, validate, and review the computer models of any electric corporation that are used for the purpose of planning, operating, constructing, or maintaining the corporation's electricity transmission system, and that are the basis for testimony and exhibits in hearings and proceedings before the commission.

(h) The transmission computer models shall be available to, and subject to verification by, each party to a commission proceeding in accordance with subdivision (a) of Section 1822, and regulations adopted pursuant to subdivision (d) of Section 1822."

⁶ CPUC Rules of Practice and Procedure 74.1-74.7.

⁷ Public Utilities Code section 631: "In addition to the requirements of Article 1 (commencing with Section 1001) of Chapter 5 and any other provisions of law, the commission shall require every electrical corporation and every gas corporation proposing to construct or modify any electric plant or gas plant at a cost in excess of one hundred million dollars (\$100,000,000) to reimburse the commission for expenses of such consultants or advisory services as the commission deems necessary for either or both of the following:

(a) The processing of an application for certification of the plant.

(b) The processing of an application for approval of any rate increase reflecting the inclusion of the cost of the plant in the rates of the corporation. This subdivision applies to any plant for which the costs of construction or modification are approved for inclusion in the corporation's rates on or after January 1, 1983."

"Electric plant" and "gas plant" are defined broadly in Public Utilities Code sections 217 and 221.